

REMARKS

Claims 10-13 and 16-19 are pending after entry of the amendments above.

New claim 19 has been added to more distinctly point out and describe the invention in the application. Support for new claim 19 can be found in the claims as originally filed and in the specification at, for example, page 19, third paragraph, through page 20, first paragraph. No new matter is introduced by the amendment.

No new matter is introduced by this amendment.

Entry of Amendment filed September 2, 2003

Applicants request the entry and consideration of the amendments in the response filed on September 2, 2004, in response to the Office Action dated May 30, 2003.

Claims 16-18 Considered Independent and Distinct Inventions

The Office Action dated May 30, 2003 indicated that newly presented claims 16-18, which recited that the composition of claim 13 further comprising a biocompatible carrier (claim 16) which carrier can be a hydrogel (claim 17) and can be resorbable (claim 18) were withdrawn for being directed to a non-elected invention. Applicants respectfully traverse, and as requested in the prior response, ask that the Office clarify this position.

First, the Office does not make clear what is intended. Does the Office intend to impose a Restriction Requirement? Does the Office intend to instead impose an election of species requirement? The Examiner will appreciate that each of these have different implications for the subject matter the Office deems can be pursued in a single patent application.

Applicants note that claims 16-18 are directed to species of the genus of claim 13 and not an invention distinct from and independent of the invention previously claimed. Therefore, claims 16-18 are not properly subject to restriction under MPEP § 821.03.

Furthermore, the Office Action does not provide adequate reasons as to why claims 16-18 are considered independent or distinct from the invention as originally claimed, as required by MPEP § 821.03.

Accordingly, Applicants respectfully request that withdrawn claims 16-18 be reinstated.

Advisory Action dated February 19, 2004

The Advisory Action dated February 19, 2004, stated that the proposed amendments contained in the Response filed September 2, 2003, would not be entered because the amendments raise new issues. Specifically, the Advisory Action states that “the phrase ‘having enhanced cell binding with respect to collagen’ raises new issues that would require additional consideration.”

Applicants note that the language used in the amendment tracks exactly the same language that appears in the claims that issued from applications to which the present application claims priority. Exemplary claims from the parent cases are as follows:

U.S. Pat. No. 5,958,428

- 1. An apparatus for soft tissue repair, comprising:**
 - a biologically compatible structure having interstices or pores; and,
 - a compound carried on the structure adjacent to the interstices or pores and being in an amount effective to promote cell attachment to the structure and into the interstices or pores, the compound having a domain that mimics collagen binding to cells and having enhanced cell binding with respect to collagen.

- 4. An apparatus of a construction adapted for cartilage, tendon, or ligament repair, said structure comprising:**
 - a biologically compatible structure including a plurality of fibers; and
 - a compound carried by the structure, the compound having a domain that mimics collagen binding to cells and has enhanced cell-binding with respect to collagen, the compound being in an amount effective to promote cell attachment to the fibers.

6. A bone repair apparatus, comprising:

a biologically compatible structure including a ceramic, a metal, a polymer or a metal-ceramic composite; and,
a compound carried on the structure and having a domain that mimics collagen binding to cells, and having

enhanced cell-binding with respect to collagen, the compound in an amount effective to promote cell attachment to the structure.

10. An additive, useful with medical repair or reconstructive apparatus formed of a biomaterial, the additive including a synthetic peptide, the peptide having a domain that mimics collagen binding to cells and has enhanced cell binding with respect to collagen, the peptide in an amount effective to promote cell attachment when the additive is carried on a repair or reconstructive apparatus wherein the peptide has the sequence Gly-Thr-Pro-Gly-Pro-Gln-Gly-Ile-Ala-Gly-Gln-Arg-Gly-Val-Val (SEQ ID NO: 1), Gly-Pro-Gln-Gly-Ile-Ala-Gly-Gln-Arg (SEQ ID NO: 2), Gln-Gly-Ile-Ala-Gly-Gln (SEQ ID NO: 3), Gln-Gly-Ile-Ala-Gly-Gln-Arg (SEQ ID NO: 4), Phe-Gly-Ile-Ala-Gly-Phe (SEQ ID NO: 5), Gly-Ile-Ala-Gly-Gln (SEQ ID NO: 6), Gln-Gly-Ala-Ile-Ala-Gln (SEQ ID NO: 7), Phe-Gly-Ile-Ala-Gly-Phe (SEQ ID NO: 9), Cys-Gly-Ile-Ala-Gly-Cys (SEQ ID NO: 10), Glu-Gly-Ile-Ala-Gly-Lys (SEQ ID NO: 11), NAc-Ile-Ala-Ala (SEQ ID NO: 12), Ile-Ala- β Ala (SEQ ID NO: 13), and NAc-Ile-Ala-N-Me (SEQ ID NO: 14).

U.S. Pat. No. 6,268,348

10. An implant apparatus, comprising:

a biologically compatible structure having interstices or pores, the structure having thereon a compound and living cells growing on the structure, the compound being carried on the structure adjacent to the interstices or pores and being in an amount effective to promote cell attachment to the structure and into the interstices or pores, the compound having a domain that mimics collagen binding to cells and having enhanced cell-binding with respect to collagen.

13. A bone repair apparatus, comprising:
a biologically compatible structure including a ceramic;

a compound carried on the structure, the compound having a domain that mimics collagen binding to cells, and having enhanced cell-binding with respect to collagen, the compound in an amount effective to promote cell attachment to the structure; and,
living cells derived from fibroblasts carried on the structure, wherein the living cells display at least one morphologic change consistent with an osteogenic phenotype.

15. An apparatus, comprising:
a substrate; and,
a synthetic peptide immobilized on the substrate, the peptide having a domain that mimics collagen binding to cells and having enhanced cell-binding with respect to collagen.

Applicants submit that the language found acceptable in repeated instances in the past should, for the same reasons, again be acceptable in the instant case. Accordingly, rejections relating to this language should be withdrawn, which action is respectfully requested.

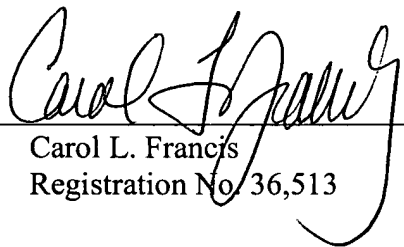
Conclusion

Applicant submits that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number UCAL-223CON2.

Respectfully submitted,
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Date: Mar 2, 2004

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